IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 604 OF 2006
IN
Chamber Summons No. 1487 of 2005
IN
SUIT NO. 654 OF 2000

Arun Parasmal Nahar .. Appellant.

V/s.

1. S.B.I.MUTUAL FUNDS & ORS. ..Respondents.
And
The New India Assurance Co. Ltd.. ..Applicant.

Mr.S.A.Divan with Mrs. Madhavi Divan with Mr.Z.A. Jariwala i/by M/s. Thakore Jariwala & Associates for the Appellant.

Mr. Naresh Ratnani i/by M/s. Ashwin Ankhad & Associates for Respondent No.5.

Mr.Gaurav Joshi i/by M/s.Tejpal & Co.for Respondent No.2.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 15th SEPTEMBER, 2006.

P.C.:

. By the common order dated 28th February, 2006, the learned single Judge decided three Applications, namely, one - the Application by way of Notice of Motion No.2291 of 2005 taken out by the defendant No.3 for dismissal of the suit under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure; second - the application by way of Chamber Summons No.119/2005

taken out by the Stock Holding Corporation of India Ltd. for the impleadment of Plaintiff No.2 and for consequential amendments and, third - the application by way of Chamber Summkons No. 1487 of 2005, taken out by New India Assurance Co. Ltd., for their impleadment as Plaintiff No.3 and for consequential amendments.

2. In **Appeal No.1068 - Mr. Madhukar Venkatesh Ulla vs. M/s. Anita Hermy D'Souza & Ors., decided on 23rd January, 2006**, the Division Bench of this Court presided over by one of us (R.M.Lodha,J.), held that an order of addition of parties is not a 'judgment' under clause 15 of the Letters Patent and, therefore, not amenable to Appeal. In para 22 of that judgment, the Division Bench held thus :-

> "22. In so far as an order of addition of parties is concerned, surely, it is not a final judgment. It is so because such order does not decide the questions or issues in controversy in the suit; it does not bring an end to suit or action. Such order is not preliminary judgment as well. By ordering addition of the party, the suit is not disposed of on a preliminary point. The debatable issue is whether the order of addition of party is interlocutory or intermediary judgment as categorised by the Supreme Court and hence appealable under clause 15 of Letters Patent. Our answer is in the negative. For one, such order does not possess the characteristics and trapping of finality in as much as it decides nothing and is only initiatory. The other it does not adversely affect a valuable right of the party directly nor decides an important aspect of the trial in

an ancillary proceeding. Such order is only procedural in nature. Ultimately nature and effect of the order would be determinative in holding whether such order is 'judgment' within the meaning of clause 15 of the Letters Patent. Where trial Judge allows an impleadment of the party being either necessary or proper party, what is ordered is the participation of the party in the suit who has not been impleaded by the plaintiff initially. By impleadment of that party neither important aspect of the trial nor ancillary proceedings is decided. Such order even directly does not affect the valuable right of the plaintiff. Merely because the plaintiff has to fight the case against a party unwillingly or that it may to some extent widen the controversy in the suit, that would not mean that his valuable right is directly affected. We find ourselves in agreement with the well considered opinion of the Madras High Court that by addition of a party rights of the parties in any manner are not decided nor the proceedings are determined finally. Where the trial Judge allows any impleadment of the party in a given case at best some right of the plaintiff would be affected but the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff has full right to contest the defence that would be set up by the added party and succeed in the suit. By such order, there is no determination of any right or liability nor does it take away substantial right of the plaintiff and, therefore, an order of addition of a party shall not fall within the meaning of the word 'judgment' under clause 15 of the Letters Patent. "

3. In view of the aforesaid decision, the present Appeal is not maintainable and dismissed as such.

(R.M.LODHA,J.)

(S.A.BOBDE,J.)

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